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June 30, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-B204
Washington, D.C. 20554

Re: **Notice of Ex Parte Communication**
In the Matter of Implementation of the Payphone Reclassification and Compensation and Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128

Dear Ms. Dortch:

AT&T Corp. ("AT&T") hereby submits this written *Ex Parte* in response to APCC's *Ex Parte*, dated June 15, 2004, filed in the above captioned proceeding.[1]

APCC's objections to AT&T's proposal are groundless because they are based on the old regime whereby interexchange carriers ("IXCs") were the guarantors of switched-based resellers' ("SBRs") payphone liability to payphone service providers ("PSPs").[2] Under its new rules, the Commission shifted this

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[1] *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Report and Order, FCC 03-235, released October 3, 2003 ("*Report and Order*"). A summary of the *Report and Order* was published in the Federal Register on November 6, 2003. *See* 68 Fed. Reg. 62751. The Commission's new rules become effective July 1, 2004. *See* FCC Public Notice, DA 04-1309, rel. May 11, 2004.

[2] *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No.

responsibility from the IXC to the SBR because the SBR has the ability to track payphone calls that complete on its platform/switch. As the Commission found, "*only SBRs possess all of the relevant call completion data.*" [3] Thus, the Commission's new rules clearly establish that the obligation for paying the PSPs falls squarely on the carrier that completes the call.

On May 27, 2004, AT&T filed an *Ex Parte* describing a process by which it will pay payphone compensation for all delivered payphone calls (completed and not completed) on behalf of certain of its SBR customers. AT&T referred to this proposal as "Option 2." AT&T developed Option 2 in response to the Commission's requirements in paragraph 48 of the *Report and Order*, which reads in relevant part:

> "We further conclude that SBRs and PSPs may negotiate other mechanisms for payment other than those set forth in our rules. Specifically, we find that the SBR may enter into any other compensation arrangement voluntarily agreed to by the relevant parties . . . Accordingly, we permit SBRs to rely upon any current or future contractual arrangements they may have with interexchange carriers or PSPs *provided that the PSP concurs*." (Emphasis added.)[4]

First, AT&T is perplexed why APCC is opposed to this proposal since the PSPs are being over compensated for the use of their payphones. In its proposal, AT&T has agreed to pay compensation to the PSPs, on behalf of its SBR customers, on 100% of all calls delivered to its platform/switch, not just completed calls. This is a service being offered to AT&T's SBR customers as an accommodation. Contrary to APCC's assertions, this arrangement does not shift the obligation to pay PSPs away from the SBR to the IXC. Although this alternative payment mechanism relieves the SBR of any obligation to comply with the audit requirements or to build tracking systems, as contemplated by the Commission's rules, it does not relieve these SBRs, as the primary economic beneficiary, from liability to compensate the PSPs. AT&T's proposal merely provides a vehicle for payment by the SBR to the

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96-128, Second Order on Reconsideration, 16 FCC Rcd 8098 (2002) (*"Second Order on Reconsideration")*.

[3] *Report and Order* at 20.

[4] AT&T has pending a *Petition for Clarification or, in the Alternative, Reconsideration*, filed December 8, 2003, in which it requested that the Commission clarify that the requirement in Paragraph 48 does not require the concurrence of the PSP when the contractual arrangement between an IXC and a SBR provides for compensation to the PSP on 100% of all routed delivered calls originated from its payphones or alternatively eliminate this requirement when such SBR-IXC arrangement is involved.

PSPs for those SBRs that feel that the additional cost of paying on 100% of all delivered calls to the PSPs is preferable for economic reasons.

Second, AT&T's proposal clearly states that AT&T agrees to pay the PSPs until such time as the National Payphone Clearinghouse ("NPC") receives notice from AT&T that the SBR will no longer take advantage of its Option 2 offer. As previously discussed, notwithstanding the fact that AT&T is not a guarantor of the payment obligations of the SBR, AT&T has agreed to make payments on behalf of the SBR – through the notice date – whether or not AT&T is paid by the SBR. In addition, the NPC has agreed to send PSPs a broadcast e-mail, via the NPC notification system, that will notify the PSPs that new information has appeared on the NPC web page, which in turn will alert the PSPs of any changes to AT&T's payment process made on behalf of its SBRs.

Third, APCC's position on "takebacks." is misplaced because it is a function of the old regime. Since AT&T has agreed to pay on 100% of all delivered payphone compensation calls to the SBR's platform/switch, AT&T does not expect there to be any takebacks associated with completion issues for SBRs that choose Option 2. Moreover, contrary to APCC's assertions, nowhere in AT&T's proposal does it state that AT&T will withhold payments to the PSPs until AT&T is paid by the SBRs. Rather, AT&T intends to pay the PSPs, in a timely manner (generally on a quarterly basis through the NPC). As stated above, until the NPC receives notice from AT&T of a change in the SBR's payment arrangement, AT&T will continue to pay on all calls through the date of the change in status.

Fourth, AT&T disagrees with APCC's assertion that AT&T is not giving the PSPs sufficient notice of a change in status. Because the PSPs are paid in arrears on a quarterly basis (*e.g.,* the quarterly compensation for the July 1, 2004 to September 30, 2004 period does not occur until January 2005), the PSPs may get as much as 3 to 6 months notification depending on the exact day that the NPC receives notice from AT&T of an SBR change from Option 2 to Option 1(SBR pays payphone compensation directly to the PSPs). This is more than adequate notice for the PSP to expect payment from the SBR directly or negotiate some other payment arrangement through the APCC. Further, when a SBR changes from Option 2 to Option 1, the SBR will most likely have begun or completed the audit process and begun or completed testing of its systems, which are intended to provide the necessary assurances to the PSPs that the SBR's call tracking systems are accurately tracking its payphone calls to completion. Additionally, APCC's suggestion that every change in status should be effective on a payphone compensation quarter goes well beyond the new rules. For example, if the Commission were to require AT&T to inform the PSPs of changes to its payment arrangements *"no later than 30 days prior to the beginning of the first quarter,"* as recommended by APCC, this would have severe business consequences for any new SBR that wishes to start business because it would only be able to do so at the beginning of a quarter.

Finally, the PSPs are adequately protected because the new rules provide sufficient reporting requirements for both the Intermediate and Completing Carriers (which includes the SBRs) to protect the PSPs. The Commission's enforcement authority is sufficient to protect the PSPs from a SBR's non-compliance with the Commission's rules.

Therefore, for all of the foregoing reasons, AT&T submits that its proposal to pay compensation to PSPs on behalf of its SBR customers satisfies all conditions, including adequate notice, necessary to ensure that PSPs will be fairly compensated.

Respectfully submitted,

/s/

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cc: Chris Libertelli
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